

SUPREME COURT OF INDIA

Reveendran

Versus

State of Kerala

(G.B. Pattanaik and M.B. Shah, JJ.)

Criminal Appeal No. 809 of 1997

02.12.1999

JUDGMENT

G.B. Pattanaik, J. - Appellant Raveendran along with two other accused persons stood charged under Sections 302 and 201 IPC and accused Gopalan under Section 201 IPC also charged. Raveendran and Gopalan preferred appeal No. 87 of 1990 to the High Court of Kerala. State of Kerala was the third accused. The High Court by the impugned judgment, affirmed the acquittal of Gopalan and the acquittal of Raveendran under Sections 302 and 201 as well as the conviction of Gopalan under Section 201 IPC. The learned Sessions Judge sentenced Raveendran to rigorous imprisonment for life for his conviction under Section 302, and five years R.I. and to pay a fine of Rs. 10,000 for his conviction under Section 201, with the further direction that the sentences would run concurrent. Gopalan, for his conviction under Section 201 IPC, he was sentenced to rigorous imprisonment for four years and to pay a fine of Rs. 10,000 and six months. Gopalan has not preferred any appeal and it is only Raveendran, who has preferred the appeal.

2. The prosecution case in nutshell is that deceased Yeshoda developed intimacy with one Gopalan (not married), Gopalan died and Yeshoda gave birth to a child. Yeshoda, thereafter, came in contact with accused Raveendran however did not approve the relationship between them. Raveendran married Yeshoda, purchased land in a place called Kappad, constructed a small house and lived therein. After spending some time, Raveendran and Yeshoda decided to dissolve the marriage. Yeshoda used to visit the house of Raveendran. Yeshoda that he would purchase a house for her at Badagara. The prosecution alleged that on 3.3.1988, Yeshoda's husband informed her that he would come with jeep and fetch her. PW8 informed PW6, the brother of Yeshoda, about the jeep at Payam Mukku. It is alleged that PW23, the younger brother of Yeshoda went to Iritty for market and informed him about Yeshoda. When PW23 could not say the whereabouts of Yeshoda, Raveendran told him that he had a second marriage. PW23, accordingly, conveyed this to his brother PW6 and mother PW16. PW16 became surprised to hear from Raveendran that he did not know anything about Yeshoda. On not getting any information, her son PW6 went to Peravoor Police Station and lodged a missing report. It is thereupon, the Police Officer at Tellicherry, as certain articles had been recovered from the dead body of a lady, which were lying there, became convinced that the articles belonged to Yeshoda. On 30.3.1988, PW1 saw a dead body of a lady in a ravine at Manantavady. PW1 then went to the police station and gave a statement to the police and a case was registered. Inspector took up the investigation. He sent the dead body for post-mortem examination and on getting the report, he confirmed that the death was a clear case of homicide, case was registered under Section 302. Accused Raveendran and Gopalan, certain recoveries were made from him pursuant to a disclosure statement. Accused Gopalan was arrested and a confession was made from him. The third accused was also arrested on the same day. On completion of investigation, all the accused persons stood their trial. There is no eye witness to the occurrence and the entire case hinges upon the evidence of the prosecution.

of PWs 1, 6 and 16, coupled with the recoveries of M.Os. 1, 2, 4 and 5, the learned Sessions Judge as well as the learned Additional Sessions Judge, who examined the dead body recovered from the ravine was that of the deceased Yeshoda and this conclusion has not been challenged. If the learned Sessions Judge's conclusion is correct, the accused appellant Raveendran is concerned, the circumstances relied upon by the High Court are :-

- (i) That Raveendran and Yeshoda developed intimacy and ultimately married but the parents of Raveendran were not happy with the marriage.
- (ii) After marriage, though they lived for sometime as husband and wife happily at a place called Kappal, Raveendran wanted to divorce Yeshoda and thought of a second marriage;
- (iii) Yeshoda was seen in the company of the accused persons in a jeep by PWs 7 and 8 on 3.3.1988 at 9.30 a.m. near the Grant Hotel, Rameswaram.
- (iv) The jeep bearing No. K.L.A. 1170 was found during the forenoon of 3.3.1988 at Payam Mukku, Irudayapuram, Rameswaram, in the presence of PWs 4, 7, 8 and 9.
- (v) From the evidence of PW10 and PW11, it is established that a jeep stopped near the Grant Hotel, Rameswaram, on 3.3.1988. A man came in the jeep, took tea and one woman was sitting in the jeep, almost tired.
- (vi) Conduct of accused Raveendran, in not making any inquiry about Yeshoda after 3.3.1988.
- (vii) Medical evidence of the doctor, who conducted the autopsy over the dead body as well as the post-mortem examination, is to the effect that the exact cause of death could not be given and opinion was reserved, pending the result of chemical analysis. The Assistant Chemical Examiner Exh.P11, the said doctor opined that it is not possible to say as to whether the injuries are ante-mortem or post-mortem but if the injuries are ante-mortem then the head injury sustained by the deceased could be caused by hitting with stones like M.Os. 11 or 12. In view of the medical evidence, the High Court however came to the conclusion that the injuries were ante-mortem in nature.
- (viii) Recovery of articles belonging to the deceased on the basis of statement made by the accused Raveendran in the presence of PWs 4, 7, 8 and 9. The two statements made by the accused are Exhibits P30 and P31.
- (ix) Extra-judicial confession of the accused as deposed by PW15. This extra-judicial confession was not accepted by the High Court as the exact words or words as nearly as possible were not reproduced by PW15 and further PW15 took him to an arrack shop and after consuming liquor, narrated the incident. Thus it cannot be said to be a confession. It is curious to note that even though, the High Court did not accept the so called extra-judicial confession of the accused to PW15, yet relied upon the evidence of PW15 for completing all the links in the chain of circumstances.

3. On these circumstances, the High Court affirmed the conviction of accused Raveendran of the charge.

4. It is contended on behalf of appellant Raveendran that the circumstances relied upon by the High Court do not establish the prosecution beyond reasonable doubt, but also even if all the circumstances can be said to have been established, they do not unequivocally point to the guilt of the accused and exclude any hypothesis consistent with his innocence. To discuss in detail the law relating to the circumstantial evidence, suffice it to say that prosecution must establish a chain of circumstances pointing towards the guilt of the accused and though each of the circumstances by itself may not be sufficient, the circumstances must be so complete that it would exclude every other hypothesis and unequivocally point to the guilt of the accused. If the circumstances said to have been established in the light of the aforesaid principle, we find sufficient for the conviction of appellant that the circumstances thus proved, do not point out unerringly to the guilt of the accused. It is also noted that the medical evidence. The dead body of Yeshoda was found on 30th of March, 1988 and the post-mortem was conducted by the doctor, who issued the post-mortem certificate Exh.P10, categorically stated that the cause of death was as a result of head injury, in his opinion, pending the result of chemical analysis. On getting the report of the Assistant Chemical Examiner Exh.P12, which indicated that the deceased sustained head injury, which if ante-mortem, could be caused by hitting with stones like M.Os. 11 or 12. The said report further revealed that nobody was seen near the ravine at the time of the deceased or not. When the doctor himself has not been able to give a definite opinion as to the injuries found on the deceased,

and the dead body itself was found on 30th of March, 1988 and Yeshoda alleged to have been seen in the jeep for us to sustain the conclusion of the High Court that the death of Yeshoda can only be homicidal. The High Court could have jumped to the aforesaid conclusion and we, therefore, have no hesitation to hold that the conclusion of homicide death is wholly erroneous. The extra-judicial confession as deposed by PW15 has not been relied upon. The High Court also came to the conclusion that it is difficult to rely upon the same, as the exact words or even the substance is not reproduced by PW15. That apart, as has been stated earlier, even the evidence of PW15 indicates that Raveendran was drinking liquor, where-after Raveendran disclosed the entire incident and therefore, such statement cannot be said to be reliable. In view of the fact that it is the outcome of the consumption of liquor, both by the witness as well as the accused, if at all it is to be taken into view of the matter, the so-called extra-judicial confession has to be excluded from the purview of consideration. The important circumstance which can be said to have been established by the evidence of PWs 7 and 8 is that Yeshoda was seen on 3rd March, 1988 in a jeep and that jeep was found to be moving around on different places on the same day. In view of the fact that about seeing the jeep on 3rd of March, 1988 at different places at different point of time, the High Court has not taken into account with each other, so far as the time factor is concerned.

That apart, the so-called evidence of PWs 10 and 11 who had deposed that at 5 P.M. on the same day, Yeshoda was seen at Hotel, is of no consequence and cannot be held to be incriminating in nature, as they never knew accused Raveendran and identification parade and, therefore, the said evidence cannot be utilised to bring home the charge against accused Raveendran. The only evidence of PWs 7 and 8 is to the effect that on 3rd of March, 1988 at 9.30 A.M., Yeshoda was seen in a jeep. In view of the fact that concerned, the prosecution case is rather hazy and the High Court itself has brushed aside the same on the ground that it is an ingredient of an offence. It is no doubt true that through some witnesses, the prosecution wanted to establish that accused Raveendran attempted to kill Yeshoda by hitting her with jeep but could not succeed and Yeshoda escaped, but that circumstance is not supported by the evidence. PW23 had testified the so-called extra-judicial confession and has not been relied upon and it would be highly improper to rely upon the conduct of accused Raveendran. PW23 who was living in an adjacent house of Yeshoda at Kappad, in her evidence has stated that Raveendran had once offered her that she would purchase a van for him, if he agrees to divorce her. This is not sufficient for establishing a motive on the part of accused Raveendran. In our opinion, therefore, on the materials on record there is no evidence of any motive on the part of the accused Raveendran for committing the crime. In this state of affair, the same cannot be said on the basis of statement made by accused Raveendran can hardly be said to be a clinching circumstance. The prosecution case has been proved beyond reasonable doubt. In view of our conclusion, as aforesaid, we have no hesitation to hold that the case has not been proved beyond reasonable doubt as against accused Raveendran and, therefore, the conviction under Section 302 as well Section 201 IPC, cannot be sustained. We accordingly, set aside the conviction and sentence and acquit accused Raveendran levelled against him. He be set at liberty forthwith, unless required in any other case.

Appeal allowed.